

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED SPECIALTY  
INSURANCE COMPANY.

**Plaintiff,**

# HOMELAND INSURANCE COMPANY OF NEW YORK.

### Defendant/Third-Party Plaintiff,

V.

## BUSH ROED & HITCHINGS, INC.,

### Third-Party Defendant.

CASE NO. C18-1846JLR

ORDER DENYING  
THIRD-PARTY DEFENDANT'S  
MOTION TO AMEND CASE  
DEADLINES AND  
BIFURCATING THIRD-PARTY  
CLAIMS

## **L. INTRODUCTION**

Before the court is Third-Party Defendant Bush Roed & Hitchings, Inc.’s (“BRH”) unopposed motion to amend the case deadlines. (Mot. (Dkt. # 37).) On November 23,

1 2020, the court issued an order to show cause whether it should sever or bifurcate  
2 Defendant/Third-Party Plaintiff Homeland Insurance Company of New York's  
3 ("Homeland") claims against BHR. (OSC (Dkt. # 40) at 3.) All parties responded. (*See*  
4 Pl. Resp. (Dkt. # 44); Def./Third-Party Pl. Resp. (Dkt. # 43); Third-Party Def. Resp. (Dkt.  
5 # 46).) The court has considered the motion, the parties' responses to the order to show  
6 cause, and the relevant law. Being fully advised, the court DENIES BRH's motion to  
7 amend the case deadlines and BIFURCATES the third-party claims.

## II. BACKGROUND

9 Homeland initially removed this case on December 21, 2018. (See Not. of  
10 Removal (Dkt. # 1).) The court scheduled trial for June 16, 2020 (03/27/19 Min. Order  
11 (Dkt. # 15)) but vacated that date as a result of the pandemic (04/17/20 Min. Order (Dkt.  
12 # 22)). During a status conference on September 9, 2020—almost two years after the  
13 case began and 17 months after the deadline to join parties—both parties advocated to  
14 add a third-party defendant, BRH, under the belief that this addition would facilitate  
15 resolution of the case. (See 09/09/20 Min. Order (Dkt. # 25).) Accordingly, the court  
16 granted leave for Homeland to file a third-party complaint. (09/21/20 Order (Dkt. # 28).)  
17 The court additionally set this matter for trial in January 2021 and emphasized that it  
18 would not consider further amendments. (09/09/20 Min. Order; *see also* OSC at 2.)  
19 Homeland added BRH as a third-party defendant near the end of September 2020.  
20 (Third-Party Compl. (Dkt. # 29).)

Unfortunately, BRH's addition has not prompted resolution. Instead, BRH moved to amend the case deadlines because it has not had the opportunity to participate in the

1 litigation. (Mot. at 2-3.) BRH supports severance or bifurcation if the court will not  
 2 entertain continuance. (Third-Party Def. Resp. at 2.) Homeland opposes both.  
 3 (Def./Third-Party Pl. Resp. at 3.) Plaintiff United Specialty Insurance Company (“United  
 4 Specialty”) defers to Homeland. (Pl. Resp. at 2.)

### 5 III. ANALYSIS

6 Absent good cause, the court does not grant trial continuances. Fed. R. Civ. P.  
 7 16(b)(4); (*see* Sched. Order (Dkt. # 15) at 2 (“The court will alter these dates only upon  
 8 good cause shown[.]”).) As iterated previously, the court is unwilling to again amend the  
 9 case schedule for the original claims and counterclaim, for which no good cause has been  
 10 shown to justify another continuance. (*See* OSC at 2; *see generally* Mot. (focusing only  
 11 on third-party claims).) BRH’s good cause argument—that it “simply has not had the  
 12 opportunity to participate in the litigation and would be unduly prejudiced if the current  
 13 scheduling order is not extended” (Mot. at 3)—does not apply to United Specialty or  
 14 Homeland, both of whom have been litigating this matter for almost two years.  
 15 Accordingly, the court denies BRH’s motion to amend the case schedule as it applies to  
 16 the original claims and counterclaim.

17 However, the court agrees that BRH is differently situated, and as such, the court  
 18 bifurcates the third-party claims from the original claims and counterclaim. A district  
 19 court’s authority to bifurcate comes from Federal Rule of Civil Procedure 42(b), which  
 20 states, “[f]or convenience, to avoid prejudice, or to expedite and economize, the court  
 21 may order a separate trial of . . . third-party claims.” Fed. R. Civ. P. 42(b). The decision  
 22 to bifurcate is in the sound discretion of the trial court. *Hangarter v. Provident Life &*

1   | *Acc. Ins. Co.*, 373 F.3d 998, 1021 (9th Cir. 2004). Courts weigh several factors,  
2   including convenience, prejudice, and judicial economy. *Bowoto v. Chevron Corp.*,  
3   No. C99-02506SI, 2008 WL 2074401, at \*1 (N.D. Cal. May 15, 2008).

4                 Here, convenience and prejudice considerations strongly favor bifurcation. The  
5   court agrees that expecting BRH to retain and depose witnesses for the newly added  
6   third-party claims in roughly three months is not only inconvenient for all parties but  
7   would also unduly prejudice BRH in its ability to prepare for trial. (*See* Mot. at 3.) The  
8   same is true for various other aspects of this matter, including the opportunity to file  
9   dispositive motions, the ability to meet deadlines for other pretrial filings, and the  
10   opportunity to attempt resolution before trial.

11                 Moreover, despite Homeland's contentions, judicial economy supports bifurcation.  
12   (*See* Def./Third-Party Pl. Resp. at 3.) "Bifurcation is particularly appropriate when  
13   resolution of a single claim or issue could be dispositive of the entire case." *Karpenski v.*  
14   *Am. Gen. Life Cos., LLC*, 916 F. Supp. 2d 1188, 1190 (W.D. Wash. 2012). In *Karpenski*,  
15   the court determined that bifurcation of bad-faith and extra-contractual claims from the  
16   rescission claims was proper because resolution of the rescission issue could dispose of  
17   the entire case. *Id.* The same is true here. As Homeland makes clear in its third-party  
18   complaint, its subrogation claims against BRH are only at issue "to the extent the [c]ourt  
19   makes an award of contribution or indemnity in favor of USIC and against Homeland[.]"  
20   (Third-Party Compl. ¶¶ 15, 17.) Thus, if Homeland prevails on the original claims, that  
21   resolution will be dispositive of the third-party claims. As in *Karpenski*, "[i]t is therefore

1 in the interest of expeditious case management and judicial economy to bifurcate the  
2 case.” 916 F. Supp. 2d at 1190.

## IV. CONCLUSION

4 Based on the foregoing, the court DENIES BRH's motion to amend the case  
5 deadlines (Dkt. # 37) and BIFURCATES Homeland's third-party claims against BRH  
6 from the original claims and counterclaim. The case schedule (Dkt. # 25) set out for  
7 those original claims and counterclaim remains unchanged. The court shall set a separate  
8 case schedule for the third-party claims.

Dated this 2nd day of December, 2020.

John P. Blunt

JAMES L. ROBART  
United States District Judge